

COURTESY COPYUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----X
TYCO INTERNATIONAL, LTD. and
TYCO INTERNATIONAL (US), INC.,Plaintiffs/Counterclaim
Defendants,

v.

L. DENNIS KOZLOWSKI,

Defendant/Counterclaim
Plaintiff.
-----X**MEMO ENDORSED**No. 02 Civ. 7317 (TPG)
ECF CASE

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>12/10/10</u>

**ASSENTED-TO MOTION TO MODIFY NOVEMBER 23, 2010 AMENDED
AND RESTATED PRELIMINARY INJUNCTION ORDER**

Defendant/Counterclaim Plaintiff L. Dennis Kozlowski, with the assent of Plaintiffs/Counterclaim Defendants Tyco International Ltd. and Tyco International (U.S.) Inc. respectfully moves for a modification of the Amended and Restated Preliminary Injunction, entered by the U.S. District Court for the Southern District of New York on November 23, 2010, imposing certain restraints on transfers of Mr. Kozlowski's assets (the "Preliminary Injunction Order"). In support of this motion, Mr. Kozlowski states as follows:

1. On or about November 27, 2002, the State of New Jersey, Department of Treasury, Division of Investment commenced a lawsuit in the U.S. District Court for the District of New Jersey, captioned *State of New Jersey v. Tyco Int'l Ltd., et al.*, No. 02-cv-5701, asserting claims against Mr. Kozlowski, among other defendants, for alleged violations of the federal securities laws and the New Jersey RICO statute, among other causes of action (the "New Jersey Action").

2. In order to avoid the costs and uncertainties of litigation, and without any admission of liability or wrongdoing, Mr. Kozlowski has reached an agreement with plaintiff in the New Jersey Action to settle all claims asserted or that could have been asserted in the New Jersey Action. The agreement requires Mr. Kozlowski to pay \$150,000 to plaintiff in the New Jersey Action.

3. On or about February 8, 2008, the State Treasurer for the State of Michigan commenced a lawsuit in the U.S. District Court for the Eastern District of Michigan, captioned *State Treasurer of the State of Michigan v. Tyco Int'l Ltd., et al.*, No. 08-cv-10578, asserting claims against Mr. Kozlowski, among other defendants, for alleged violations of the federal securities laws and the New Jersey RICO statute, among other causes of action (the "Michigan Action").

4. In order to avoid the costs and uncertainties of litigation, and without any admission of liability or wrongdoing, Mr. Kozlowski has reached an agreement with plaintiff in the Michigan Action to settle all claims asserted or that could have been asserted in the Michigan Action. The agreement requires Mr. Kozlowski to pay \$40,000 to plaintiff in the Michigan Action.

5. On or about November 29, 2007, the Teacher Retirement System of Texas, Fred Alger Management, Inc., CastleRock Fund, Ltd., CastleRock Partners L.P., CastleRock Partners II L.P., CastleRock Asset Management Personal Accounts, Atticus Global Advisors, Ltd., Atticus International Fund, Ltd., Half Moon Capital Partners, L.P., NR Securities Limited (f/k/a Dred, Ltd.), National Bank of Canada, Omega Capital Partners, L.P., Omega Overseas Partners, Ltd., Omega Capital Investors, L.P., Omega Equity Investors, L.P., Omega Equity Overseas, Ltd., Omega Institutional Partners, L.P., Omega Institutional Partners II, L.P., Beta Equities,

Inc., Goldman Sachs Profit Sharing Master Trust, The Ministers and Missionaries Benefit Board of American Baptist Churches and Permal LGC Ltd., Watchung Road Associates, L.P., Leon G. Cooperman, Toby Cooperman, Michael Scott Cooperman, Commonfund Asset Management Company, Inc., and Munder Large-Cap Value Fund commenced a lawsuit in the U.S. District Court for the District of New Jersey, captioned *Teacher Retirement System of Texas, et al. v. Tyco Int'l Ltd., et al.*, No. 2:07-cv-5704, asserting claims against Mr. Kozlowski, among other defendants, for alleged violations of the federal securities laws and the New Jersey RICO statute, among other causes of action (the "Texas Teachers Action").

6. In order to avoid the costs and uncertainties of litigation, and without any admission of liability or wrongdoing, Mr. Kozlowski has reached an agreement with plaintiffs in the Texas Teachers Action to settle all claims asserted or that could have been asserted in the Texas Teachers Action. The agreement requires Mr. Kozlowski to pay \$90,000 to plaintiffs in the Texas Teachers Action.

7. Mr. Kozlowski therefore respectfully seeks a modification of the Preliminary Injunction Order to permit Mr. Kozlowski to transfer \$150,000 to counsel for plaintiff in the New Jersey Action, to permit Mr. Kozlowski to transfer \$40,000 to counsel for plaintiff in the Michigan Action and to permit Mr. Kozlowski to transfer \$90,000 to counsel for plaintiffs in the Texas Teachers Action, separate from and in addition to any and all other transfers permitted under the Preliminary Injunction Order.

6. Plaintiffs/Counterclaim Defendants Tyco International Ltd. and Tyco International (U.S.) Inc. have assented to the relief requested.

WHEREFORE, L. Dennis Kozlowski respectfully requests this Honorable Court grant the following relief:

A. Modify the Preliminary Injunction Order to permit Mr. Kozlowski to transfer \$150,000 to counsel for plaintiff in the New Jersey Action, to transfer \$40,000 to counsel for plaintiff in the Michigan Action and to transfer \$90,000 to counsel for plaintiffs in the Texas Teachers Action, separate from and in addition to any and all other transfers permitted under the Preliminary Injunction Order; and

B. Grant such other relief as may be just.

Dated: December 9, 2010
New York, New York

Respectfully submitted,

/s/ [Robert N. Shwartz]

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So ordered.
Thomas P. Grieser
USAD
12/10/10